



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,622	02/13/2002	Raymond L. Houghton	210121.470C11	2478
500	7590	10/02/2002	EXAMINER	
SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVE SUITE 6300 SEATTLE, WA 98104-7092			EPPS, JANET L	
		ART UNIT		PAPER NUMBER
		1635		7
DATE MAILED: 10/02/2002				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/076,622	HOUGHTON ET AL.
Examiner	Art Unit	
Janet L Epps-Ford, Ph.D.	1635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Statys

1)  Responsive to communication(s) filed on 13 February 2002.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) 1-10 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ .      6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1, 6, and 7, drawn to an isolated polypeptide, fusion proteins, and compositions thereof, classified in class 530, subclass 350.
  - II. Claim 2-3, and 7 drawn to polynucleotide compositions, an expression vector comprising a polynucleotide sequence encoding the polypeptide of claim 1, and a host cell transformed with said expression vector, classified in class 435, subclass 325.
  - III. Claims 4, 7 and 10, drawn to an isolated antibody, or antigen-binding fragment thereof, that specifically binds to a polypeptide of claim 1, compositions thereof, and kits, classified in class 530, subclass 387.1.
  - IV. Claim 5, drawn to a method of detecting the presence of a cancer in a patient comprising contacting a biological sample with a binding agent that binds to the polypeptide of claim 1, classified in class 435, subclass 7.1.
  - V. Claims 8 and 9, drawn to a method for stimulating and immune response in a patient, treating cancer, or inhibiting the development thereof, in a patient comprising the administration of a composition comprising a polypeptide or a fusion protein, classified in class 514, subclass 2. Claims 8 and 9 will be examined to the extent that it reads on administration of a polypeptide product.
  - VI. Claims 8 and 9, drawn to a method for stimulating and immune response in a patient, treating cancer in a patient, or inhibiting the development thereof,

comprising the administration of a composition comprising a polynucleotide, classified in class 514, subclass 44. Claims 8 and 9, will be examined to the extent that it reads on administration of a polynucleotide product.

VII. Claims 8 and 9, drawn to a method for stimulating and immune response in a patient, treating cancer in a patient, or inhibiting the development thereof, comprising the administration of composition comprising an antibody, classified in class 424, subclass 130.1. Claims 8 and 9 will be examined to the extent that it reads on administration of an antibody product.

VIII. Claims 8 and 9, drawn to a method for stimulating and immune response in a patient, treating cancer in a patient, or inhibiting the development thereof, comprising the administering to a patient an antigen presenting cell, classified in class 424, subclass 93.1.

IX. Claim 7, drawn to a composition comprising a first component selected from the group consisting of physiologically acceptable carriers and immunostimulants, and an antigen presenting cells that express a polypeptide, classified in 435, subclass 325.

The inventions are distinct, each from the other because of the following reasons:

2. Invention II and Invention VI are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP

§ 806.05(h)). In the instant case the expression vectors and host cells of Group II can be used for the production of the polypeptide of Group I.

3. Invention I and Invention V, are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the polypeptide of group I can also be used in a method for isolating antibodies.

4. Inventions III and each of Groups IV and VII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the antibody of group III can be used in a method for isolating or purifying the polypeptide of group I from a sample, for example in an affinity column purification of the polypeptide.

5. Inventions IX and VIII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the methods of group VIII can be practiced with a materially different product, for example the methods of group VIII can be practiced using the expression vectors and polynucleotides according to group II or the polypeptides according to group I.

6. The inventions of each of Groups I, II, III, and IX are structurally and functionally different products, which are made by different methods and have different uses. The examination of all groups would require different searches in the U.S. Patent Database and the scientific literature would require the consideration of different patentability issues.

7. The methods of Groups IV-VIII differ in the method objectives, method steps, parameters, and/or in the reagents used. Due to the differences in the methods represented by the above groups, each group represents a patentably distinct invention.

8. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

9. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper. The search for groups I-II is not required for the invention of either group III or IX.

10. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

11. Furthermore, claim 1 recites isolated polypeptides comprising a sequence selected from the group consisting of SEQ ID NOs: 594-627.

12. These claims are drawn to amino acid sequences of more than ten individual, independent, and distinct sequences in alternative form. These sequences are thus deemed to normally constitute independent and distinct inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such sequence is presumed to represent an independent

and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq. Accordingly, in most cases, only one (1) independent and distinct sequence will be examined in a single application without restriction. The search of no more than one sequence may include subsequences within the selected sequences. Thus with the election of one of the inventions set forth above, which comprise or depend from either claim 1, the applicant is required to selected one SEQ ID NO: from the group consisting of either of SEQ ID NOs: 594-627.

13. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

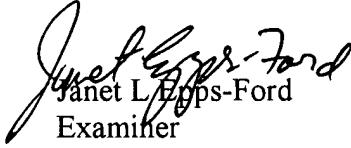
14. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet L Epps-Ford whose telephone number is 703-308-8883.

The examiner can normally be reached on M-T, Thurs-Friday 9:00AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John LeGuyader can be reached on (703)-308-0447. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-746-5143 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

  
Janet L Epps-Ford  
Examiner  
Art Unit 1635

JLE  
September 30, 2002